WVONGA
WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION

May 13, 2014 (Revised)

The West Virginia Oil and Natural Gas Association (WVONGA) is grateful for the opportunity to comment on the development of rules to complement the new Aboveground Storage Tank Act set forth in SB373.

WVONGA, chartered in 1915, is one of the oldest trade associations in the state, and is the only association that serves the entire oil and gas industry. The activities of our members include drilling, completion, gathering, transporting and processing. WVONGA members operate in virtually every county in West Virginia. Our members employ thousands of people across the state, having payrolls totaling hundreds of millions of dollars annually. Our members have a cumulative investment of nearly $10 billion in West Virginia, own about 20,000 oil and gas wells, have more than 15,000 miles of pipeline crisscrossing the state and provide oil and natural gas to roughly 300,000 West Virginia homes and businesses.

SB373 (the Act) offers a variety of potential regulatory requirements applicable to owners and operators of aboveground storage tanks (AST). The Act also, contains at least two classes of exemptions (some from the entire Act and others from the Acts permitting requirements). We already have an extraordinary regulatory program in place for the oil and gas industry. There are several other enforceable programs in place, which regulate aboveground storage tanks. WVONGA urges the agency to create rules that complement existing programs and avoid duplicative or conflicting regulations. To assist the DEP, the following provides an overview of the tanks used in the oil and gas industry.

Overview of ASTs Used in the Oil and Gas Industry

1. **Drilling –** Drilling locations are temporary in nature and in most cases the drilling activities are completed within 60 days. However, depending on the number of wells being drilled on the pad and other operational factors, the drilling equipment may be on location for longer than 60 days but in most cases less than 100 days. The tanks used during drilling activities are rental tanks that are portable and move with the drilling rig from location to location. Most drilling pads have a berm and a gutter system around the perimeter of the pad. The operational areas have liners and secondary containment around tanks and equipment. Marcellus and other shale horizontal drilling locations are regulated under Article 6A, which requires drilling locations to have and maintain secondary containment and a berm system to contain fluids on the location. Additionally, Article 6A requires every drilling location to

have a Site Safety Plan which contains information on the planned activities, chemicals used, and the emergency response plan. Finally all tanks that contain oil or that may contain oil are regulated pursuant to the Oil Pollution Prevention Act and have SPCC Plans. The following categories of tanks are present at drilling locations:

(a) Surface impoundments constructed of earthen material;

(b) Aboveground steel open top tanks for water storage. These tanks range in size from 9,000 barrels to 41,000 barrels and are equipped with a high density polyethylene ("HDPE") liners;

(c) Drilling water tanks. These are typically 500 barrel portable rental tanks that are used to hold fresh water and water encountered during drilling activities. These tanks move with the drilling rig. These tanks are placed on HDPE liners and have secondary containment.

(d) Drilling fluid tanks. These are typically 500 barrel portable rental tanks are used to hold drilling mud and fluids. These tanks move with the drilling rig. These tanks are placed on HDPE liners and have secondary containment.

(e) Diesel tanks for diesel generators that generate electricity to power the drilling rigs. These tanks are typically greater than 1,320 gallons and because they contain petroleum these tanks are subject to regulation under 40 C.F.R. Part 112 and have SPCC Plans. These tanks are placed on HDPE liners and have secondary containment.

2. **Completion –** Completion activities consist of hydraulic fracturing and flowback operations. These operations are typically completed within 60 days. However, depending on the number of wells being completed and other operational factors, the completion equipment may be on location for longer than 60 days but in most cases less than 100 days. Most well pads have a berm and a gutter system around the perimeter of the pad. The operational areas have HDPE liners and secondary containment around tanks and equipment. Marcellus and other shale horizontal drilling locations are regulated under Article 6A, which requires drilling locations to have secondary containment along with a berm system to contain fluids on the location. Additionally, Article 6A requires every drilling location to have a Site Safety Plan which contains information on the planned activities, chemicals used, and the emergency response plan. Finally, any tanks that contain oil or that may other petroleum products are regulated pursuant to the Oil Pollution Prevention Act and have SPCC Plans. The following categories of tanks are present during completion activities:

(a) Surface impoundments constructed of earthen material;

(b) Aboveground steel open top tanks for water storage. These tanks range in size

from 9,000 barrels to 41,000 barrels and are equipped with a high density polyethylene ("HDPE") liners;

(c) Tank farms used to store fresh and impaired water for hydraulic fracturing operations. The tank farms can be located on a location of the drilling activity, or offsite. The tanks are part of a Water Management Plan;

(f) Operational Day Tanks and Flowback Tanks. These are typically 500 barrel portable rental tanks that are used to store fresh and impaired water for injection into the well or flowback water during well cleanout activities. These tanks are placed on HDPE liners and have secondary containment.

(g) Diesel tanks for diesel pumps for the hydraulic fracturing operations. These tanks are typically greater than 1,320 gallons and because they contain petroleum these tanks are subject to regulation under 40 C.F.R. Part 112 and have SPCC Plans. These tanks are placed on HDPE liners and have secondary containment.

3. **Production –** A typical production site could be expected to have the following facilities:

(a) Separators, line heaters, and gas processing units take material from the wellhead and process it to separate oil/water/natural gas in advance of placing the natural gas into gathering lines and the oil/water into production/storage tanks. These units typically hold less than 1320 gallons of fluids and serve as process vessels.

(b) Production Storage Tanks receive oil, brine water and condensate from the well either directly or through a separator. These tanks typically hold greater than 1,320 gallons. Tanks could also be present to store methanol but these tanks typically hold less than 1,320 gallons. The majority of the Production Storage Tanks are regulated under 40 CFR Part 112 and have SPCC plans.

(c) Production Storage Tanks associated with dry gas wells and coal bed methane wells may not have SPCC plans because oil and or condensate is not expected to be produced and 40 CFR Part 112 does not apply. These tanks store only production brine water.

(d) Chemical storage tanks containing surfactants (foamers and defoamers) and corrosion inhibitors, hydrate inhibitors and methanol are stored in drums or totes which are less than 1,320 gallons.

4. **Midstream** – Midstream operations include gathering, compression and processing facilities and transmission pipeline networks that transport natural gas to distribution systems. These operations typically have:

(a) Tanks that hold a variety of liquids including, but not limited to:

- Condensate,
- Natural gas liquids,
- Produced fluids,
- Lubricating oil,
- Used oil,
- Glycols, and
- Methanol.

These tanks are typically larger than 1320 gallons and some are regulated under 40 CFR Part 112 and have a SPCC Plan or a site specific SPCC Plan and a Groundwater Protection Plan;

(b) Compressor Stations have a variety of the tanks listed above. Stations that serve transmission pipelines and jurisdictional gathering pipelines are regulated by the Federal Pipeline Safety Act and/or the West Virginia Public Service Commission. Stations that only serve intrastate gathering pipelines are not regulated by the Federal Pipeline Safety Act or the West Virginia Public Service Commission. Tanks that contain or may contain oil (used oil, lubricating oil, condensate) are regulated under 40 CFR Part 112 and have a SPCC plan. Tanks that contain glycol or methanol are not regulated under 40 C.F.R. Part 112 but some companies prepare spill prevention plans for these non-petroleum tanks.

(c) Dehydration Units Facilities are typically associated with gathering or production pipelines. However, they may also be associated with a compressor station or even a standalone facility.

(d) Pipeline drips may or may not have separate tanks associated with them depending on their location and accessibility. The drips themselves are less than 1320 gallons; however, the tanks are likely to be larger than 1,320 gallons. These tanks may contain oil and thus are regulated under 40 C.F.R Part 112 and are required to have SPCC plans. Additionally, drips associated with transmission and jurisdictional gathering lines are regulated under the Federal Pipeline Safety Act and are subject to DOT rules found at 49 CFR Part 192 and 195.

(e) Tanks containing natural gas liquids. Depending on the substance or combination of substances, some substances are stored as liquids in pressurized vessels and these substances are gasses under standard, temperature and pressure. These substances include ethane, propane, and butane. Heavier hydrocarbons, such as condensate and oils, remain in the liquid state under standard temperature and pressure. Tanks containing these liquids are typically larger than 1,320 gallons and are regulated under 40 CFR Part 112 and have a SPCC Plan;

(f) Tanks containing petroleum or may contain petroleum. These tanks are typically larger than 1,320 gallons and some are regulated under 40 CFR Part 112 and have a SPCC Plan;

(g) Methanol and Glycol storage tanks. These tanks are typically larger than 1,320 gallons. However, because methanol and glycol are not petroleum, tanks containing these materials are not regulated under 40 C.F.R. Part 112. However, because tanks containing methanol and glycol at facilities with tanks that contain oil, some companies have written spill containment plans for methanol and glycol tanks.

Comments on the Regulatory Approach

There are also several places in the Act, which contain what appear to be duplicative, and sometimes conflicting, requirements. These include: 1) registration and inventory, 2) scope of section 25 exemptions, 3) aboveground storage tanks subject to other regulatory requirements, 4) inspection requirements, 5) permitting requirements in a Zone of Critical Concern, 6) definitions, 7) records, 8) general NPDES permits 9) design standards, and 10) signs. It is therefore the responsibility of the West Virginia Department of Environmental Protection (DEP) to interpret these duplicative and conflicting requirements through its rulemaking. WVONGA appreciates the opportunity to share its insight.

I. Registration and Inventory.

Section 4 of the Act requires the Secretary to compile and inventory of all ASTs regulated under the Act. This section requires the inventory to identify information on the ASTs. Many companies maintain storage tank records using Microsoft Excel. WVONGA recommends that the DEP develop an electronic registration form that can accept records from Excel.

WVONGA recommends this form include several options to make registration transparent and efficient. The form should allow entities to register multiple tanks for one facility/location. For a majority of tanks, the information for the tank installation date and its age will be redundant and will only be different if a fixed tank was relocated from its original installation location or it was purchased from another entity and put into use at a new facility. The form should allow the registrant to pick from a list of pre-developed categories for tank construction (e.g., steel, fiberglass, HDPE, concrete, etc.) and fluid type (e.g., acid, base, petroleum, solvent, etc.). This recommendation is intended to minimize confusion during the registration process and facilitate ease of compiling information for DEP. If necessary, an "other" category could be included for atypical tank construction or fluid types. Under W. Va. Code 22-30-4(c), registrants must identify the regulatory standards and requirements the tank(s) is required to meet. There are many different standards applicable to ASTs. Therefore, it would be beneficial for the form to include a checklist of the standards and requirements that could potentially apply to registered ASTs (i.e. 40 CFR Part 112, WV fire code, and WV groundwater protection standards).

With regard to the installation date or age of the tank, in many cases the exact age of the tank may not be known. In these cases, WVONGA recommends that the Secretary allow the owner to report on the approximate age of the tank, such as a check box that has age categories, for instance: under 5 years, between 5 and 10 years, and over 10 years.

Additionally, Section 4 requires registrants to provide the identity of and distance to the nearest groundwater public water supply intake and/or nearest surface water downstream public water supply intake. The location of public water supplies – groundwater and surface water – and the location of the zone of critical concern (ZCCs) is not readily available to the public. Making such information readily available to the public may present a public safety concern. The agency has access to such information. WVONGA would support a registration form, which requires owners only to submit the longitude and latitude of the ASTs. The DEP should take the responsibility to identify nearby public water supplies and zones of critical concern.

The oil and gas industry uses many mobile rental tanks that temporarily used during drilling, completion, production and midstream operations. These mobile tanks are hold less than 500 barrels of fluids and are used to contain drilling fluids, drilling water, fracturing water and flowback water and fuel. In the midstream sector, mobile rental tanks are used to hold fresh water used for hydrostatic testing and water removed from the pipeline after hydrostatic testing. Mobile tanks are rented from vendors and pursuant to the rental agreements the vendors tanks that are suitable for the purpose of containing liquids and thus are clean and leak proof when delivered to the customer. The vendors are also responsible for tank maintenance. These mobile tanks move with the drilling rig and the completion equipment and are not used for long term storage. Due to the portable and temporary nature of these mobile tanks, WVONGA recommends that the Secretary exclude mobile tanks used for drilling, completion, production and midstream activities from the definition of AST set forth in Section 4 of the Act.

II. Scope of Section 25 Exemptions

There has been substantial concern amongst the regulated community regarding the scope of the exemption established under Section 25 and whether the exemption from permitting also exempts the ASTs from other requirements associated with permitting. The intent of the statute and the legislature is clear that tanks which fall within the categories contained in Section 25 are not only exempt from the permitting requirements, but also are subject to existing regulatory requirements, which meet or exceed the protective requirements of the remainder of the Act.

The plain language of the statute states at W. Va. Code 22-30-25(a):

> While all aboveground storage tanks shall be required to participate in the inventory and registration process set forth in section four of this article, the following categories of containers and tanks shall not be required to be permitted under section five of this article, *either because they do not represent a substantial threat of contamination, or they are currently regulated under standards which meet or exceed the protective standards and requirements set forth in this article*.

Emphasis Added.

In this section, the Legislature expresses a finding that specific categories of tanks either do not pose a threat or are regulated pursuant to standards and requirements at least equal to the

Act. As such, additional regulation would be duplicative and would be contrary the intent of the legislature.

Statutory construction requires that when interpreting the language it be given meaning so as to be in concert with the remainder of the Act. The West Virginia Supreme Court of Appeals has held:

> "A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole. Words and clauses should be given a meaning that harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." *Mitchell v. Cline*, 412 S.E.2d 733, 736 (W.Va. 1991). *See also State ex. rel. Holbert v. Robinson*, 59 S.E.2d 884 (W.Va. 1950).

The only consistent reading of Section 25 that provides for harmony amongst all the provisions is that tanks subject to Section 25 exemptions from permitting should be deemed to be in compliance with the additional requirements of the Act because they are already regulated under other provisions of law found by the legislature to meet or exceed the requirements of the Act. This is consistent with the W. Va. Supreme Court of Appeals decision, which provides:

> "Our rules of statutory construction require us to give meaning to all provisions in a statutory scheme, if at all possible. We must attempt to apply statutes so that no legislative enactment is meaningless; to read them to harmonize with legislative intent." *Belt v. Cole*, 305 S.E.2d 340, 342 (W.Va. 1983). *See also Lee-Norse v. Rutledge*, 291 S.E.2d 477, 481 (W.Va. 1982), *Smith v. State Workmen's Compensation Commissioner,* 219 S.E.2d 361 (W.Va. 1975).

This interpretation would avoid duplicative regulations for the categories of tanks identified in Section 25. This is significant for the oil and gas industry because many of the ASTs used in the industry are regulated by the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, the West Virginia Public Service Commission, and the Oil Pollution Prevention Act. Additionally, other ASTs as defined by the Act are temporary, mobile tanks.

III. Aboveground Storage Tanks Subject to Other Regulatory Requirements.

Pursuant to Section 25(b), the Secretary has the discretion to designate, by legislative rule, additional categories of aboveground storage tanks for which permitting may be waived, after confirming that the tank is regulated under an existing state or federal regulatory permit or enforceable standard. In addition to the regulations identified in Section II, the oil and gas industry is regulated by a vast array of regulatory programs both state and federal in nature. In

order to promote efficiency in the regulation of ASTs, WVONGA recommends that the Secretary allow for the regulation of ASTs pursuant to those existing regulatory programs that meet the criteria of the Act. By deeming a tank that is subject to an existing regulatory program as meeting the requirements of the Act, duplicative regulation is avoided.

Tanks Subject to Aboveground Storage Tank Control ("ASTC") Plan

WVONGA recommends a permit-by-rule program for those tank owners willing to demonstrate that their tanks are subject to existing regulatory requirements that are at a minimum equivalent those contained in the Act. For the oil and gas industry, the existing regulations include Article 6 and 6A, the West Virginia Groundwater Protection Act and regulations under 47 C.S.R. 58, the Oil Pollution Prevention Act, the Natural Gas Safety Act, and the Process Safety Management Program under Occupational Health and Safety Act. This program would require the establishment of an Aboveground Storage Tank Control ("ASTC") plan which contains requirements that are comparable to 40 CFR, Part 112, or a modified or existing Well Work Permit which includes an ASTC plan incorporated to cover the tanks contained at the well work and which is incorporated as a term and condition of the permit. Failure to have facilities covered under the ASTC plan, or be otherwise exempt, would cause those tanks to be in violation of the permitting requirement of the AST Act.

This program could be like the SPCC plan required by 40 C.F.R. Part 112 in that it would be a self- implementing program. Under this approach, the Secretary could develop the requirements for a single spill prevention and containment plan that would incorporate the state stormwater pollution prevention plan, groundwater pollution prevention plan, SPCC and the ASTC plan. The overarching ASTP plan would require inspections and certifications as is required for SPCC plans developed under 40 C.F.R Part 112. The creation of one state plan would provide an easy reference for both industry and government alike. Additionally, the self-implementing nature of this program would enable the DEP to focus its limited resources on compliance and enforcement as opposed the administrative burdens of permitting. In addition, we would recommend that DEP allow submittal or approval of either the SPCC plan or ASTC plan to provide a basis to extend the exemption to ASTs in the zone of critical concern.

IV. Inspection Requirements.

Section 6 of the Act requires that all tanks be inspected and certified by January 2015. The extent of such inspection and certification is not set forth in the statute and the person whom must perform and certify the inspection is limited to Professional Engineers, API certified inspectors, and inspectors certified by the Secretary. If limited to Professional Engineers and API Certified Inspectors, the universe of persons available to conduct the inspections and certify the results is greatly limited. Therefore, WVONGA requests that the Secretary adopt a training program similar to 40 CFR Part 112 that allows the Professional Engineer to prescribe the inspection criteria for the facility. Additionally, WVONGA recommends that the Secretary develop a certification program to allow for a greater number of professionals being able to certify inspection results.

Given the time frames contained in the statute and the number of tanks potentially subject

to these requirements, WVONGA requests that the Secretary phase in the inspection and certification program. The first phase should be limited to a visual inspection of the exterior of the tank and other controls and the second phase should be expanded include more information pertaining to the condition of the tank. Additionally, the inspection and certification program should complement existing regulatory programs that include tank inspections. For example, inspection of those tanks, that contain fluids or are located in areas which pose little risk to the public water supply, should be limited to visual inspections. Whereas, those tanks because of the nature of the fluids or proximity to water supplies, which pose high risk to the public water supply, should be subject to more rigorous inspection protocols.

V. Permitting Requirements in a Zone of Critical Concern

Section 6 of Article 31 the Public Water Supply Protection Act authorizes the Secretary to require permitting to assure protection of water intakes in zones of critical concern. WVONGA recommends that approval by the Secretary of either an SPCC plan or an ASTC plan should be sufficient to allow such an exemption from permitting under W. Va. Code § 22-31-6 to apply even if the tank is within a zone of critical concern. In addition, we also request that DEP clarify what level of consultation is necessary for regulated facilities and the Bureau of Public Health with respect to spill plan development.

VI. Definitions

Filtered surface water

The Act waives permitting requirements for ASTs containing "drinking water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes" because "they do not represent a substantial treat of contamination, or they are currently regulated under standards which meet or exceed the protective standards and requirements" of the article. W. Va. Code § 22-30-25. WVONGA supports the determination that the storage of water is not subject to many of the requirements of the Act. The agency still needs to provide clarification as to certain terms and definitions. The oil and gas industry often stores water onsite for hydrologic fracturing source water. This water does not pose a threat to public water supplies, and registration or other regulation under this statute is unnecessary. When drafting the rule the agency should consider the following definition for "filtered surface water" – "filtered surface water is potable water, or water that has been diverted from natural sources, such as but not limited to, streams, rivers, and lakes, and has not been used in any industrial process."

Standard Temperature and Pressure

The AST Act defines aboveground storage tanks as "a device made to contain an accumulation of more than one thousand three hundred twenty gallons of fluids that are liquids at standard temperature and pressure…" W. Va. Code § 22-30-3 (emphasis added). WVONGA recommends that the Secretary adopt the definition of standard temperature and pressure identical to that found in W. Va. Code St. R. § 45-21-2.67, which provides: "'Standard

conditions' means a temperature of 20EC (68EF) and pressure of 760 millimeters of Mercury (mm Hg) (29.92 in Hg)."

Leak detection

WVONGA suggests the agency broadly define "leak detection" so as to include visual inspections as well as electronic detection, and allow for approval of alternate methods such as inventory control, and/or the professional engineer's judgment on what is adequate for leak detection. Visual inspections are a cost effective and reliable means of identifying leaks in aboveground storage tanks.

Wastewater Treatment Tanks

Wastewater treatment tanks are used to recycle water used in the hydraulic fracturing process. These tanks treat the water to allow for its subsequent reuse as source water for hydraulic fracturing. WVONGA urges the agency to make a determination that wastewater treatment tanks are "process vessels" as defined by the AST Act.

Material Safety Data Sheets

Material Safety Data Sheets will undergo a change as the Hazard Communication Standard (HCS) requires chemical manufacturers, distributors, or importers to provide Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) to communicate the hazards of hazardous chemical products starting June 1, 2015. Applicable sections of the aboveground storage tank regulations should therefore refer to SDSs instead of MSDSs.

Noncarbon materials

The tank definition incorporates the term "noncarbon materials", but the materials listed following the term are carbon based. Therefore, we are unsure what type of material is meant by "noncarbon" construction. WVONGA recommends DEP clarify the definition of noncarbon materials.

Mobile Tanks

Mobile tanks are portable tanks used during drilling, completions and production to store water and fluids used during the drilling, completion and production operations. Mobile tanks are skid or wheel mounted tanks that can hold no more than 500 barrels of fluids. Mobile tanks are rented from vendors and pursuant to the rental agreements the vendors tanks that are suitable for the purpose of containing liquids and thus are clean and leak proof when delivered to the customer. Mobile tanks used at drilling, completion and production operations are not aboveground storage tanks for the purposes of the Act.

Release

"Release" is defined in W. Va. Code § 22-30-3(12) as "any spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an aboveground storage tank into groundwater, surface water or subsurface soils. The term shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an aboveground storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater; Provided, That the overfill or spillage of up to twenty gallons of fluid during the loading or unloading of the liquids shall not be

required to be reported if the overflow or spillage is wholly contained within a containment structure or facility, it is promptly cleaned up and no portion of the overfill or spillage escapes onto the ground or into adjacent surface water." The definition for a release includes spills into containment structures that possess an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater. The overall intent of tank secondary containment is to prevent spills from being discharged into such areas. A release, regardless of the quantity, must meet the definition of release defined in W. Va. Code § 22-30-3(12) set forth above. Even if spills are greater than 20 gallons into secondary containment, there may not be an immediate threat of contamination. For example, a tank filling operation with a spill of 21 gallons into a 500 gallon containment area does not pose a threat to contamination when it does not escape the containment and it is promptly cleaned up. Therefore, we request the DEP consider that releases into secondary containment which do not escape and that are promptly cleaned up are not reportable, regardless of the quantity.

VII. Records

The Act authorizes the Secretary to develop requirements for maintaining written or electronic records that log certain information for each aboveground storage tank. W. Va. Code § 22-30-5. WVONGA recommends that the Secretary to allow owners/operators to develop site wide spreadsheets as opposed to individual forms. The requirements should list the minimum information that must be kept and allow flexibility in the format of the documentation. These forms may include tank delivery information as well. It would be appropriate for these to be kept in the owners/operators business records and made available to the Secretary upon request.

The Act requires owners/operators of ASTs to list personnel responsible for ASTs. WVONGA urges the Secretary to allow listing of positions responsible for such ASTs as opposed to individual names and telephone numbers. Individual employees may leave employment or transfer positions and thus it would be difficult to keep such information accurate and current.

VIII. General NPDES Permits

The prohibition of general NPDES permits within zones of critical concern as specified in section 22-31-9 should be clarified to exclude construction storm water general permits. There is no option currently available for authorization of an individual construction NPDES permit within the state of West Virginia. Also, construction activities are temporary in nature and subject to other applicable provisions, such as 40 CFR 112 and WV groundwater pollution prevention regulations. The number of applicable construction activities located within a designated zone of critical concern is also expected to be minor. Therefore, the potential for a significant impact to drinking water supplies from storage tanks located at a construction site is low.

IX. Design Standards

Sections 22-30-4(e) and 22-30-5(b) require information and implementation of

design/construction standards for tanks. Other than NFPA criteria for flammable materials and API/STI standards for steel tanks, we are unaware of any other specific, nationally-recognized design criteria for non-steel chemical storage tanks. Since design standards and storage requirements for chemical storage tanks can be very specific due to compatibility issues, chemical manufacturers and association groups should be consulted as to the standards these tanks are currently subject to. This aspect of the rule must be taken into consideration, especially as part of the applicable performance standards required under 22-30-5 and inspection and certification criteria under 22-30-6.

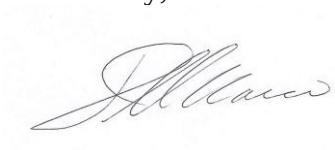
X. Signs

Under section 22-30-11, tanks are to display the tank registration number, contact numbers, and other signage as required by OSHA. Some tanks are also required to have signage such as NFPA, Hazardous Materials Identification System, etc. To minimize confusion during a potential emergency situation as a result of multiple signage on a tank, we do not recommend that DEP require any additional signage criteria other than what is currently listed in section 22-30-11.

XI. Spill Prevention Response Plans

Regulations should allow existing contingency plans (such as those that might exist in a current SPCC plan) to satisfy the requirement for an SPR plan if the plan includes the required SPR plan elements. Plan updates should be required only for changes related to WV Tank Rule-regulated ASTs, not exempted or otherwise-regulated tanks.

Sincerely,



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